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U.S. Citizenship  
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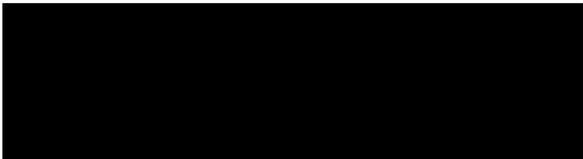


FILE: WAC-01-276-59555 Office: CALIFORNIA SERVICE CENTER Date: JAN 07 2005

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an office supplier. It seeks to employ the beneficiary permanently in the United States as a market analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). Here, the Form ETA 750 was accepted for processing on May 6, 1997. The proffered wage as stated on the Form ETA 750 is \$37,604 per year. On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner as of January 1996.

On the petition, the petitioner claimed to have been established in 1991, to have a gross annual income of \$220,000, and to currently employ three workers. In support of the petition, the petitioner submitted its Form 1120S, U.S. Income Tax Return for an S Corporation for the year 2000.

Because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on February 9, 2002, the director requested additional evidence pertinent to that ability. In accordance with 8 C.F.R. § 204.5(g)(2), the director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. The director specifically requested evidence from 1997 to the present as well as any quarterly wage reports.

In response, the petitioner's owner wrote a letter dated May 2, 2002 and stated that the petition should be amended to reflect Paging 2000 as the true petitioning entity as Stationery Land "was disbanded." He also stated that he merged "all assets/inventory from that business" to Paging 2000, of which the beneficiary "is now a part of." The petitioner submitted Paging 2000's 1120S corporate tax returns for 1997, 1998, 1999, and compiled but

unaudited financial statements for the period ending December 31, 2001.<sup>1</sup> The petitioner also submitted its 1997, 1998, 1999, and 2001 corporate tax returns. The petitioner submitted Paging 2000's articles of incorporation, seller's permit, quarterly wage reports for 2001, and Forms W-2, Wage and Tax Statements, issued from Paging 2000 to the beneficiary in 1997, 1998, 1999, 2000, and 2001, as well as a list of employees employed by both entities. The petitioner also submitted real estate documents to "document that common ownership between these two companies, in the form of myself, as the President of both companies, took place." Finally, the petitioner submitted bank records for both itself and Paging 2000 and the petitioner's owner's individual income tax return.

The petitioner's employer identification number (EIN) as reflected on the petition and tax returns is 95-4516446 and its address is listed at [REDACTED]. The tax returns show its incorporation date as 1995. Paging 2000's EIN as reflected on its tax returns is 95-4559700 with an incorporation date in 1996 and an address at [REDACTED]. Paging 2000's articles of incorporation show that it used to be located [REDACTED]. Paging 2000's quarterly wage reports reflect that it employed the beneficiary from March 2001 through March 2002. A quarterly wage report for the petitioner for the quarters ending March 31 and June 30, 2001 do not reflect employment of the beneficiary. The list of employees provided shows that four employees were employed by both the petitioner and Paging 2000. A retail lease signed in May 1997 was issued to the petitioner's owner, "dba: Stationery Land, Inc / Paging 2000, Inc."

The Forms W-2 issued from Paging 2000 to the beneficiary reflect that he was paid \$10,557.00 in 1997, \$19,408 in 1998, \$22,856 in 1999, \$27,820 in 2000, and \$26,650 in 2001. Also contained in the record of proceeding was a letter apparently written to the Department of Labor (DOL) in response to a deficiency notice issued to the petitioner while the ETA 750 was being adjudicated before that agency. In that letter, the petitioner's owner explains the employment situation of the beneficiary and the relationship between the petitioner and Paging 2000. He states the following, in pertinent part:

[Y]ou have stated that a review of EDD records does not support [the beneficiary's] claim that he has worked at this company from October, 1996 through the present. To this end, you have requested documentation to support this claim. That being said, in response to this issue, please be advised that I own two companies considered as "closely-held corporations." These companies are called Stationery Land and paging 2000, and I am the 100% shareholder of both companies. That being said, as both companies are physically situated at the same address, recordkeeping between the two companies has become commingled. Accordingly, I can, as the owner of both companies, confirm that [the beneficiary] has been employed at Stationery Land, on a continual basis, as a Market Analyst since October, 1996. However, beginning in January, 1997, [the beneficiary], for payroll purposes only, has been paid directly by Paging 2000, the other company that I own. I hope that this clarifies my unique arrangement in owning two corporations situated at the same address.

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<sup>1</sup> The petitioner's owner stated that Paging 2000's 2000 tax return was enclosed but it is not part of the record of proceeding as constituted at that time.

Your letter then indicated that [the beneficiary], according to wage records, has been working in California for Paging 2000 since 1996. It was thus requested that [the beneficiary] amend ETA 750B #15 to show his correct work history, as well as to provide a signed declaration explaining why the information previously provided conflicted with official records. In response to this point, as noted earlier in this letter, I believe that I have clarified that as I own two companies, each located at the same address, I have commingled records. Nevertheless, once again, I will state that [the beneficiary] has been, and continues to be, an employee of Stationery Land.

The petitioner's tax returns reflect the following information for the following years:

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Net income <sup>2</sup>	-\$22,945	-\$8,118	-\$34,621
Current Assets	\$69,488	\$63,937	\$32,733
Current Liabilities	\$37,176	\$48,633	\$1,692
Net current assets	\$32,312	\$15,304	\$31,041
	<u>2000</u>	<u>2001</u>	
Net income <sup>3</sup>	\$465	-\$16,114	
Current Assets	\$28,521	\$0	
Current Liabilities	\$2,323	\$0	
Net current assets	\$26,198	\$0	

Paging 2000's tax returns reflect the following information for the following years:

	<u>1997</u>	<u>1998</u>	<u>1999</u>
Net income <sup>4</sup>	\$13,159	\$10,825	-\$6,744
Current Assets	\$38,262	\$35,475	\$16,463
Current Liabilities	\$24,756	\$15,143	\$18,409
Net current assets	\$13,506	\$20,332	-\$1,946
	<u>2000</u>	<u>2001</u>	
Net income <sup>5</sup>	\$n/a	\$n/a	
Current Assets	\$n/a	\$n/a	
Current Liabilities	\$n/a	\$n/a	

<sup>2</sup> Ordinary income (loss) from trade or business activities as reported on Line 21.

<sup>3</sup> See footnote 2, *supra*.

<sup>4</sup> See footnote 2, *supra*.

<sup>5</sup> See footnote 2, *supra*.

Net current assets                      \$n/a                      \$n/a

Because the director still deemed the evidence submitted insufficient to demonstrate the petitioner’s continuing ability to pay the proffered wage beginning on the priority date, on October 2, 2002, the director again requested additional evidence pertinent to that ability. In accordance with 8 C.F.R. § 204.5(g)(2), the director specifically requested that the petitioner provide copies of annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage beginning on the priority date. The director specifically requested 2000 and 2001 tax returns for both the petitioner and Paging 2000.

In his request for evidence, the director also sought more evidence to “reaffirm the validity” of the visa petition and underlying certified labor certification and show that Paging 2000 is a successor-in-interest to the petitioner. The director explained that a “successor-in-interest must show that the new organization assumes all of the rights, duties, obligations, and assets of the original employer and continues to operate the same type of business as the original employer.” The director sought documentation to show “how the change of ownership occurred: buyout, merger, etc.” and documentation to show that Paging 2000 “will assume all rights, duties, obligations, and assets of the original employer.”

In response to the director’s request for evidence, the petitioner’s owner submitted an unsigned letter, dated December 23, 2002, stating in pertinent part, the following:

[The petitioner] was established in 1995 and was involved primarily in the office supply industry. The second company that I established, Paging 2000, Inc. was oriented primarily to pagers and cell phones.

\*                      \*                      \*

[The petitioner] was closed unofficially towards the third quarter of 2001 and officially on May 28, 2002 as evidenced by the signed Certification of Dissolution to Wind Up and Dissolve. . . Moreover, at the time that [the petitioner] was closed by me, whatever assets, duties, obligations, and rights held by that company were automatically transferred to Paging 2000, Inc. especially since, as I noted at the outset, both companies were closely-held companies owned exclusively by myself which therefore gave me carte blanche authority to render whatever business-related decisions that needed to be made.

The petitioner’s owner also stated that although the beneficiary was working exclusively for the petitioning entity, he was paid by Paging 2000 since 1996. He stated that “I had no logical reason for doing it this way other than to say that for paperwork purposes, this was how I opted to have [the beneficiary] paid.”

The petitioner re-submitted its articles of incorporation and its Forms 1120S, U.S. Income Tax Returns for an S Corporation for the years 2000 and 2001. The petitioner also submitted Paging 2000’s Forms 1120S, U.S. Income Tax Returns for an S Corporation for the years 2000 and 2001. Paging 2000’s tax returns reflect the following information for the following years:

	<u>2000</u>	<u>2001</u>
Net income <sup>6</sup>	\$12,852	-\$1,760

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<sup>6</sup> See footnote 2, *supra*.

Current Assets	\$8,815	\$6,716
Current Liabilities	\$36,143	\$32,405
Net current assets	-\$27,328	\$25,689

The director also submitted additional bank records for both the petitioner and Paging 2000. Although the petitioner's owner states that the Certification of Dissolution to Wine Up and Dissolve he references in his letter is attached to the letter, no such document is contained in the record of proceeding as currently constituted.

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, and, on May 20, 2003, denied the petition. The director did not further address the successor-in-interest issue but addressed the decision to "Stationery Land." The director apparently accepted that Paging 2000 is the successor-in-interest to the petitioning entity as he used Paging 2000's tax figures to determine that the petitioner failed to demonstrate a continuing ability to pay the proffered wage beginning on the priority date.

On appeal, counsel asserts the AAO has "acknowledged that bank statements may be used as a means of determining a sponsoring company's ability to pay the wage offer." In a subsequent brief, counsel asserts that a petitioning entity is not obligated to pay the beneficiary the proffered wage until he acquired lawful permanent residence, and that the combination of the wages actually paid to the beneficiary added to Paging 2000's net income resulted in enough funds to demonstrate Paging 2000's continuing ability to pay the proffered wage for every year except 1997. Counsel states that in 1997, combining the beneficiary's earning with Paging 2000's owner's personal income as set forth on his individual income tax return shows sufficient funds to cover the proffered wage in that year, and requests Citizenship and Immigration Services (CIS) to note that Paging 2000 was "at their infancy stage" and therefore "revenues could not have been formulated as quickly as [CIS] may have wanted to see." Finally, counsel cites to *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967) as applicable precedent and states that Paging 2000 has "carried out extensive business activities for the past several years, and has had a large product line as demonstrated through its extensive brochures and price lists previously submitted." The petitioner submits its owner's individual income tax returns.

At the outset, counsel's assertion is correct that a petitioning entity is not required to pay the full proffered wage until a beneficiary is a lawful permanent resident. This was not an issue raised by the director, is irrelevant to these proceedings, and will not be discussed any further.

The unaudited financial statements that counsel submitted with the petition are not persuasive evidence. According to the plain language of 8 C.F.R. § 204.5(g)(2), where the petitioner relies on financial statements as evidence of a petitioner's financial condition and ability to pay the proffered wage, those statements must be audited. Unaudited statements are the unsupported representations of management. The unsupported representations of management are not persuasive evidence of a petitioner's ability to pay the proffered wage. Thus, no unaudited financial statements will be considered for any purpose in these proceedings.

Counsel's reliance on the balances in Paging 2000's and the petitioner's bank accounts is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner and Paging 2000 in this case have not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate picture of their financial standing. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's and Paging 2000's

bank statements somehow reflect additional available funds that were not reflected on its tax return, such as the cash specified on Schedule L that will be considered below in determining net current assets.

Additionally, counsel's reliance on the assets of the petitioner's owner is not persuasive. A corporation is a separate and distinct legal entity from its owners or stockholders. *See Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); *Matter of M-*, 8 I&N Dec. 24 (BIA 1958; A.G. 1958). CIS will not consider the financial resources of individuals or entities who have no legal obligation to pay the wage. *See Sitar Restaurant v. Ashcroft*, 2003 WL 22203713, \*3 (D. Mass. Sept. 18, 2003). Thus, the petitioner's owner's individual income tax returns and personal income will not be considered in the context of the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

An issue not raised by the director that will be raised by the AAO is whether or not Paging 2000 met its burden of proof that it is the successor-in-interest to the petitioning entity.<sup>7</sup> The record of proceeding does not contain sufficient evidence that Paging 2000 qualifies as a successor-in-interest to the petitioning entity. This status requires documentary evidence that Paging 2000 has assumed all of the rights, duties, and obligations of the predecessor company. Even if Paging 2000 were doing business at the same location as the predecessor, this would not establish that Paging 2000 would be a successor-in-interest. There is no purchase or acquisition agreement, tax documentation, or corporate filing to substantiate the claims that the petitioner was merged into Paging 2000. Even the dissolution documentation referred to by the petitioner's owner was not submitted into the record of proceeding. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The only evidence of a relationship between the two entities is a shared address and shared owner, which is not enough to show shared liabilities, assets, and obligations. The two separate corporations have different EINs, report taxes separately, issue payroll records separately, report quarterly wages separately, and have different articles of incorporation and banking accounts. The two corporations are also involved in different businesses – one provides office supplies and the other sells and services wireless communication devices such as pagers and cellular phones. The petitioner's owner's claim that he paid the beneficiary through Paging 2000 but the beneficiary really worked for the petitioner does nothing to clarify the issue. Payment by an entity evidences an employment relationship, thus, it appears the beneficiary always maintained an employment relationship with Paging 2000 and should have indicated this on the immigration forms he submitted with this petition for an immigrant benefit. Conversely, non-payment does not evidence an employment relationship and there is no proof that the beneficiary ever actually conducted work for or had a relationship with the petitioning entity.

The legal question that is unanswered with corroborative objective documentary proof is did Paging 2000 acquire all legal responsibilities, obligations, assets, and liabilities from the petitioning entity? The petitioner's owner's statement that the two entities are closely held corporations does not legally make the entities the same in terms of liability, and if that is what is being suggested, counsel should have provided legal authority for such a

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<sup>7</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp.2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

proposition. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [CIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." The AAO determines that there is not clear and unequivocal evidence that Paging 2000 is a successor-in-interest to the petitioning entity and has a legal obligation to pay the wage. If Paging 2000 is the intended sponsor of this visa petition, it should have submitted forms in its own name and EIN to both DOL and CIS.

In any event, even if Paging 2000 were determined to be a successor-in-interest to the petitioner, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. Moreover, the petitioner must establish the financial ability of the predecessor enterprise to have paid the certified wage at the priority date. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). Since the apparent transaction occurred "officially" on May 28, 2002, the predecessor entity would have to show an ability to pay the proffered wage from the priority date until then, and the successor-in-interest would have to show an ability to pay the proffered wage from May 28, 2002 onwards.

In determining a petitioning entity's or successor-in-interest's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner and/or successor-in-interest employed and paid the beneficiary during that period. If the petitioner and/or successor-in-interest establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's and/or successor-in-interest's ability to pay the proffered wage. In the instant case, the petitioner did not establish that it employed and paid the beneficiary the full proffered wage in 1997, 1998, 1999, 2000, or 2001. Paging 2000, if it could establish that it is a successor-in-interest to the petitioner, did not provide evidence of payment of wages to the beneficiary in 2002, the relevant timeframe for consideration of its responsibility to show an ability to pay the proffered wage.

If the petitioner and/or successor-in-interest does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's and/or successor-in-interest's federal income tax returns, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioning entity's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Showing that the petitioner's and/or successor-in-interest's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner and/or successor-in-interest paid wages in excess of the proffered wage is insufficient. [REDACTED] 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on a petitioning entity's net income figure, as stated on the petitioning entity's corporate income tax returns, rather than the petitioning entity's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

The petitioner's net income of -\$22,945, -\$8,118, -\$34,621, \$465, and -\$16,114, in 1997, 1998, 1999, 2000, and 2001, respectively, do not cover the proffered wage of \$37,604 in any relevant year. Paging 2000, if it were

properly a successor-in-interest to the petitioning entity, did not provide evidence for 2002 onwards.<sup>8</sup> Thus, an ability to pay the proffered wage out of net income has not been demonstrated in any relevant year.

Nevertheless, the petitioner's and/or successor-in-interest's net income is not the only statistic that can be used to demonstrate a petitioner's and/or successor-in-interest's ability to pay a proffered wage. If the net income the petitioner and/or successor-in-interest demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's and/or successor-in-interest's assets. The petitioner's and/or successor-in-interest's total assets include depreciable assets that the petitioner and/or successor-in-interest uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's and/or successor-in-interest's total assets must be balanced by the petitioner's and/or successor-in-interest's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's and/or successor-in-interest's ability to pay the proffered wage. Rather, CIS will consider *net current assets* as an alternative method of demonstrating the ability to pay the proffered wage.

Net current assets are the difference between the petitioner's and/or successor-in-interest's current assets and current liabilities.<sup>9</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner and/or successor-in-interest is expected to be able to pay the proffered wage out of those net current assets. The petitioner's net current assets during the relevant years, 1997, 1998, 1999, 2000, and 2001, were \$32,312, \$15,304, \$31,041, \$26,198, and \$0, respectively, and none of those figures cover the proffered wage of \$37,604. Paging 2000, if it were properly a successor-in-interest to the petitioning entity, has not presented evidence of its net current assets in 2002.<sup>10</sup> Thus, an ability to pay the proffered wage out of net current assets has not been demonstrated in any relevant year.

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<sup>8</sup> Even if Paging 2000's net income figures were analyzed as a purported successorship to the petitioner, it could not evidence a continuing ability to pay the proffered wage beginning on the priority date out of its net income either. It would have to demonstrate an ability to pay the difference between the proffered wage and the amount of wages it actually paid to the beneficiary in each relevant year, which is \$27,047 in 1997, \$18,196 in 1998, \$14,748 in 1999, \$9,784 in 2000, and \$10,954 in 2001. Its net income for each respective year was \$13,159, \$10,825, -\$6,744, \$12,852, and -\$1,760. None of Paging 2000's net income covers the remaining proffered wage figures for 1997, 1998, 1999, 2000, or 2001.

<sup>9</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>10</sup> Even if Paging 2000's net income figures were analyzed as a purported successorship to the petitioner, it could not evidence a continuing ability to pay the proffered wage beginning on the priority date out of its net current assets either. It would have to demonstrate an ability to pay the difference between the proffered wage and the amount of wages it actually paid to the beneficiary in each relevant year, which is \$27,047 in 1997, \$18,196 in 1998, \$14,748 in 1999, \$9,784 in 2000, and \$10,954 in 2001. Its net current assets for each respective year were \$13,506, \$20,332, -\$1,946, -\$27,328, and \$25,689. Paging 2000's net current assets only covers the remaining proffered wage figures in 1998 and 2001 but not the other years.

In each relevant year, the petitioner and Paging 2000 did not present sufficient evidence of a continuing ability to pay the proffered wage beginning on the priority date. The petitioner has not, therefore, shown the ability to pay the proffered wage during 1997, 1998, 1999, 2000, or 2001 out of its net income or net current assets, and neither entity has shown the availability of any additional funds. Additionally, the record of proceeding does not contain sufficient evidence that Paging 2000 is a successor-in-interest to the petitioner. Even if successorship could be proven, neither entity has established that it had the continuing ability to pay the proffered wage beginning on the priority date.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.